

ELECTION/RESTRICTION:

The Examiner, in the Office Action dated July 24, 2006, required restriction to one of the following groups of claims:

Group I – Claims 1-26 and 33-49 are drawn to a method/system of using a fob/token/wallet in conjunction with a cell phone to complete transactions, classified in class 705, subclass 64-67.

Group II – Claims 27-32 are drawn to a transponder/transceiver for wireless communications with other devices, classified in class 340, subclass 10.1

REMARKS:

Applicants respectfully traverse the restriction requirement because the Examiner has not made a sufficient showing that (1) the inventions are independent and distinct and (2) of why searching all the claims of the application would be a serious burden.

The two criteria for making a proper Restriction Requirement between patentable distinct inventions are the following:

(A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(i)); and

(B) There must be a serious burden on the examiner if restriction is not required (see MPEP § 803.02, § 806.04(a) - § 806.04(i), § 808.01(a), and § 808.02).

The inventions are independent if there is no disclosed relationship between the groups and they are unconnected in design, operation or effect. The inventions are distinct when related and capable of separate manufacture, use or sale.

In regard to (A), the Group I and II claims inventions are not independent because the apparatus, device, method and system claims all include a fob/pilot element and the claims are connected in design, operation and effect. as shown and described in Figures 1 and 5A. The inventions are not distinct because they are not capable of separate use. The inventions are inextricably intertwined as a single apparatus, method, system, and program product.

In regard to (B), MPEP § 808.02 has established that a different field of search is necessary “where it is necessary to search for one of the distinct subjects in places where no pertinent art to the other subjects exist.” Claims 1-26; 33-49 and 27-32

include the same elements and are the same invention, not two different inventions. It appears to the Applicants that the Examiner, during the performance of separate searches for each of the groups (I-II), would come across ample related art to all Groups I and II claims in the above-identified group class 705, subclass 64-67.

Moreover, MPEP § 803 states, in part that “if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.”

Accordingly, Applicants respectfully submit that the subject matter of the Groups I-II is such that all of the claims may be searched together without imposing any serious burden on the Examiner. Accordingly, withdrawal of the restriction requirement is respectfully solicited.

To fulfill Applicants’ duty to reply to the Restriction Requirement, Applicants hereby provisionally elect Group I, Claims 1 -26; 32-49. Applicants reserve the right to file divisional applications based on the non-elected claims.

AUTHORIZATION:

The Commissioner is also hereby authorized to charge any additional fees which may be required for the timely consideration of this response to Deposit Account No. 13-4500 Order No. 4208-4169.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 13-4500, Order No. 4208-4169. A DUPLICATE OF THIS DOCUMENT IS ATTACHED.

Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.

Date August 8, 2006

By: _____

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